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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE 330th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 May 1998, at 10 a.m.

Chairman: Mr. BURNS

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Peru (CAT/C/20/Add.6)

1. At the invitation of the Chairman, Mr. Quispe-Correa, Mr. Reyes-Morales, Mr. Izabeta-Marino, Mr. García-Godos-McBride, Mr. García-Revilla, Mr. Chávez-Basagoitia and Mr. Chávez-Lobatón (Peru) took places at the Committee table.

2. The CHAIRMAN welcomed the Peruvian delegation and invited Mr. Quispe-Correa, Peruvian Minister of Justice, to address the Committee.

3. Mr. QUISPE-CORREA (Peru), introducing the second periodic report of Peru, expressed his Government's firm resolve to engage in a productive dialogue with the Committee. The report described specific measures taken in response to the Committee's recommendations following its consideration of the initial report in 1994 and sought to dispel the Committee's concerns regarding the situation generated by terrorist violence in the 1980s and early 1990s. The Government acknowledged that the State's reaction to terrorist violence had occasionally led to improper behaviour on the part of certain members of the security forces and it was determined that there should be no repetition of such acts. Accordingly, it had prepared legislation that cracked down on terrorists but respected the Constitution and fundamental human rights. Information would also be provided on new developments, particularly of a legislative nature, since the preparation of the report.

4. It should first be noted that prosecution and trial proceedings for terrorists had been revised and anti-terrorist legislation gradually relaxed. One of the most noteworthy relaxation measures had been the establishment of a Special Commission responsible for proposing to the President of the Republic that certain persons convicted of the crime of terrorism should be granted a measure of clemency or a pardon. To promote national reconciliation, the Government had recently promulgated a law extending the competence of the Special Commission to include terrorists who had benefited from the provisions of the Repentance Act. In addition, a bill providing for supplementary assistance for persons who had been granted a measure of clemency or a pardon had been drafted.

5. The conditions of detention of the entire prison population, including prisoners convicted of terrorism, had been improved. The fact that the Peruvian Government was cooperating closely in that connection with the International Committee of the Red Cross, which regularly visited prisoners convicted of terrorism, afforded proof of the authorities' determination to protect prisoners' rights, to show transparency and to cooperate with international bodies. New standards for the treatment of prisoners, based on the criteria established by the United Nations, had been adopted. Under new directives, for example, prisoners could be attended by doctors, members of paramedical professions, dental surgeons and psychologists in regions with penitentiary establishments and in prisons with more than 300 inmates. The National Penitentiary Institute and the Ministry of Health had signed an

agreement at the national level. Psychologists were playing an increasingly important role in psychological monitoring of prisoners and in decision-making on partial or conditional release measures. In addition, "prison welfare officers" - teachers, psychologists, sociologists and other professionals - had been trained to provide prisoners with therapy to facilitate their readjustment, gradually taking over from the police in that role.

6. In view of the progress made in the restoration of peace and in response to observations by international human rights bodies, Act No. 26447 concerning "faceless courts" had not been extended and, pursuant to Act No. 26671, the courts concerned had ceased to operate on 15 October 1997. They had been established temporarily under exceptional circumstances. Terrorist offences were currently dealt with by the ordinary courts; the abolition of "faceless judges" applied to both civilian and military courts.

7. The institutions for the administration of justice had been strengthened. The National Council of the Judiciary and the Office of the Ombudsman were operating normally. The problem created by the resignation of the incumbent members of the National Council of the Judiciary had been resolved by appointing new members, who had taken their oath of office on 15 April 1998. A bill restoring to the National Council of the Judiciary the jurisdiction of which it had claimed to be deprived had been published in the Official Journal. The Ombudsman appointed in October 1995 had been working productively. The Constitutional Court established since the submission of the initial report dealt, in particular, with amparo and habeas corpus proceedings, which, it should be stressed, continued to be applicable even during states of exception. The resources of the Office of the Public Prosecutor had been increased, in both material and legal terms. For example, Decree-Law No. 665 authorized procurators in areas where a state of emergency had been declared to enter police stations, military premises or any other detention centre to check the situation of detainees or missing persons. Further evidence of the State's concern to ensure the lawfulness of detention was the establishment of a National Register of Detainees and Persons Sentenced to a Custodial Penalty (RENADESPPLE). In addition, a Judicial Coordination Council had been established to enhance the efficiency of the administration of justice.

8. He was very pleased to inform the Committee that, pursuant to Act No. 26926, a section entitled "Crimes against humanity" had been added to the Penal Code, in which the crimes of genocide, enforced disappearance and torture had been defined; he read out the article defining torture and establishing the penalties applicable to such offences. As a concomitant of the major step thus taken towards greater respect for international human rights instruments, the Government was considering the possibility of making the declaration provided for under articles 21 and 22 of the Convention. The Committee had also made a recommendation concerning the jurisdiction of military courts which was still being studied; it was an issue calling for thorough and careful reflection since any change in the situation would require an amendment of the Constitution.

9. The Committee would certainly be interested in receiving particulars of the case of Leonor La Rosa Bustamante, which had given rise to much discussion. As Ms. Bustamante had been the victim of severe acts of torture,

the Government had undertaken an impartial investigation as a result of which the culprits had been punished. The victim had been compensated and had received medical treatment, including abroad. The proceedings had taken place prior to the existence of the provision establishing torture as a specific offence. With a view also to preventing such events from recurring in the future, however, the Government had decided to adopt the legislation defining the offence of torture. The Peruvian authorities intended to continue aligning existing legislation with international instruments in the areas of human rights and humanitarian law. To promote closer cooperation with human rights bodies, he had met the President of the International Committee of the Red Cross in Geneva and would shortly meet the United Nations High Commissioner for Human Rights, to whom he would announce the Government's intention to request assistance in human rights education and the preparation of periodic reports. He trusted that the authorities' efforts to secure greater respect for human rights would benefit from international cooperation and dialogue with the Committee.

10. Mr. CAMARA (Rapporteur for Peru) welcomed the high-level representation of the Peruvian delegation, which showed the importance that Peru attached to the Committee's work and its wish to engage in a productive and regular dialogue. He had also taken note with considerable satisfaction of the new developments reported in the oral introduction. He observed, however, that there had been a long delay in submitting the second periodic report, which should have been considered in 1993, and that, while the report responded to the requests made by the Committee in its conclusions and recommendations of 9 November 1994, it failed to comply with the Committee's guidelines for the presentation of periodic reports.

11. Among its conclusions and recommendations, the Committee had suggested, to begin with, that the procedure for dealing with terrorist offences should be reviewed with a view to establishing judicial machinery that was effective but preserved the independence and impartiality of the courts and the rights of the defence by abolishing so-called "faceless judges" and incommunicado detention. Article 2, paragraph 2, of the Convention stipulated that no exceptional circumstances whatsoever could be invoked as a justification of torture. Nevertheless, the authors of the report, in paragraphs 1 to 4 and 13 to 30, had tried to justify the emergency legislation on the grounds that it was necessary to deal with disturbances of public order. The Committee could not accept the State party's argument. The report had not mentioned the application of article 3 and it would be interesting to know whether there had been any developments in that regard since the initial report. Had any requests for asylum been made and what response had they met with? Article 4 dealt with the phenomenon known as impunity. In that connection, not only had Peru apparently failed to adopt any effective legislation, but the maintenance, contrary to the Committee's recommendations, of the preponderant role of military courts in all matters relating to disturbances of public order was highly unlikely to lead to the effective punishment of the perpetrators of acts of torture; it was common knowledge that the military were themselves often the culprits in such circumstances. Although the information provided orally by Mr. Quispe-Correa was very encouraging, the Committee wished to receive more detailed information on the courts responsible for hearing terrorist cases.

12. The report had made no mention of articles 5, 6, 7 and 8 of the Convention, doubtless because there had been no developments since the submission of the initial report. With regard to article 1 of the Convention, the Committee obviously welcomed the fact that the Penal Code now contained a definition of torture.

13. He asked for more particulars on reports he had received from various sources, particularly the Coordinadora Nacional de Derechos Humanos and the World Organization against Torture. Peru seemed to be engaged in what could be described as a process of institutional manipulation which was liable to weaken, if it had not already done so, the most effective of all checks and balances, namely strong and independent courts. According to a document published by the organizations he had mentioned, there had been no constitutional supervision since the arbitrary dismissal of three Constitutional Court judges; the functions of the National Council of the Judiciary had been curtailed, leading to the resignation of its incumbent members. The judiciary and the Office of the Public Prosecutor were allegedly lacking in independence and autonomy and run by executive commissions which had assumed responsibilities that belonged under the Constitution to the supervisory bodies of the respective authorities. The Committee had also been concerned to hear about the massacre and torture of 41 indigenous inhabitants of the village of Alto Yurinaki on 24 February 1997 in circumstances that seemed to point to the commission of discriminatory acts in breach of article 1 of the Convention. The Committee would furthermore appreciate additional information on the case of Leonor La Rosa Bustamante mentioned by Mr. Quispe-Correa, as well as on prison administration, in order to establish, inter alia, which authority was actually responsible for her case. With regard to the declarations provided for under articles 21 and 22, while he welcomed the fact that the Peruvian Government was looking into the matter, he could not help feeling that the process of reflection had already taken some time.

14. Mr. ZUPANČIČ (Alternate Rapporteur for Peru) welcomed the constructive dialogue initiated with Peru, which could help the country to resolve some of its problems. He was concerned that, although the 1979 Constitution stipulated (art. 101) that international treaties took precedence over domestic legislation in the event of a conflict between the two, the new Constitution of 1993 contained no such provision. What were the reasons for the omission and what was the status of the Convention in domestic legislation?

15. With regard to the compensation of victims of acts of torture, article 139 of the Constitution and Act No. 24973 of 28 December 1988 guaranteed reparations in cases of judicial error and arbitrary detention, but there were perhaps other similar provisions, possibly at the constitutional level. Moreover, the Civil Code and the Penal Code regulated certain aspects of compensation without specifying whether the State assumed responsibility for compensation in cases of insolvency of a State official found guilty of unlawful behaviour giving rise to compensation; details in that regard would be appreciated. He asked whether victims of acts of torture had access to legal aid and whether victim rehabilitation programmes existed. Were there educational programmes for members of the armed forces and the police dealing specifically with the prohibition of torture and, more generally, with respect

for human rights? He realized that Act No. 25211 of 16 May 1990 provided for dissemination and teaching of the Constitution and human rights treaties but he wished to know how such education was imparted and how great an impact the Act had in practice. It would be interesting to know what steps were taken to protect and guarantee the safety of victims and witnesses in proceedings concerning torture. He also wondered about the independence of military courts vis-à-vis the military hierarchy in the discharge of their judicial functions. He wished to know whether Decree-Laws Nos. 25475 and 25659, the so-called "anti-terrorist legislation", were still in force. Was it stipulated that a woman under arrest could be searched only by a female officer and, if not, why not? With regard to prison conditions, he noted that one prison, that of Challapalca, was located at an altitude of 4,800 metres. He wished to know why such a location had been chosen for a penitentiary establishment and whether any medical provision had been made to mitigate the effects of living at that altitude.

16. Stressing the importance of article 15 of the Convention, pursuant to which statements found to have been obtained through torture could not be admitted as evidence in proceedings, he asked whether Peru ensured compliance with that provision, especially in cases involving terrorism. He wished to know about the operating procedures of the Special Commission responsible for recommending to the President of the Republic the granting of a measure of clemency or a pardon to individual prisoners. Lastly, he asked whether the Government intended to rehabilitate persons wrongly accused of terrorism.

17. Mr. YAKOVLEV stressed that torture could not be justified under any circumstances and that the independence of the judiciary was a cornerstone of democracy and of respect for human rights. He wondered whether judges were really independent and asked for details of the relationship between the judiciary and the legislature. He did not fully understand how the National Council of the Judiciary operated and asked whether it was capable of protecting judges against possible pressure from the political authorities.

18. Noting that Act No. 26479 of 15 June 1995 granted an amnesty to all members of the armed forces and the police force who had been implicated in unlawful anti-terrorist activities, he wondered whether the victims could claim damages in cases where the culprits had been granted an amnesty. He also wished to know whether any legal action had been taken after 15 June 1995 and, if so, how many cases had been heard and with what outcome.

19. Mr. SILVA HENRIQUES GASPAR said he also wondered about the real extent of the judiciary's independence, which he viewed as one of the basic guarantees of the rule of law. He noted with some concern that judges must be confirmed in office every seven years and asked how such a provision could be reconciled with the principle of the irremovability of judges. He also wished to know what criteria were used to confirm judges in office. With regard to the amnesty laws, which contained no clause regarding civil liability, he asked whether they prevented victims of acts of torture from bringing criminal indemnification proceedings. He also wondered how the Peruvian authorities could reconcile the promulgation of such wide-ranging amnesty laws with article 12 of the Convention, which required the State party to proceed to a

prompt investigation when there were reasonable grounds to believe that an act of torture had been committed. Lastly, he wished to know roughly how many people had been granted an amnesty.

20. Mr. YU Mengjia asked for more detailed information on human rights teaching, specifically concerning torture. Having noted an apparent contradiction in paragraph 8 of the report between Decree-Law No. 25744, which authorized an extension of police custody, and the Constitution, which authorized no such extension, he asked for more information on the subject.

21. The CHAIRMAN associated himself with the questions asked by Mr. Yakovlev and Mr. Silva Henriques Gaspar concerning the scope of the amnesty laws and, stressing that torture could not be justified in any case, asked to what extent those laws were compatible with articles 2, 4 and 12 of the Convention. He also asked what means were available to a torture victim in the context of the amnesty laws to obtain damages and compensation. Where a State official was found guilty of the offence of torture in civil proceedings but had been granted amnesty, could he invoke the amnesty as a defence in order to shirk the obligation to compensate his victim? If that was the case, would the State assume responsibility for compensation?

22. He cited two former agents of the Peruvian intelligence service (SIE), who had admitted that torture was practised systematically and that the members of the intelligence service had received special training in torture. He also quoted the report of the World Organization against Torture for the period 1995-1998, according to which ill-treatment was not confined to the armed forces and the security forces but was also common in police stations. He asked whether the State party was aware of the allegations and, if so, what action it planned to take. He also wished to know whether investigations had been conducted and legal action taken. Lastly, he asked what criteria were used in dealing with applications for asylum, the number of persons to whom the authorities had granted refugee status during the past two years and the total number of applications filed.

23. He thanked the Peruvian delegation for its attention and invited it to return to answer the Committee's questions at the next meeting.

24. The delegation of Peru withdrew.

The meeting was suspended at 11.20 a.m. and resumed at 11.40 a.m.

EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS (agenda item 11) (continued)

Report on the ninth meeting of chairpersons of human rights treaty bodies

25. The CHAIRMAN invited Mr. Sørensen to continue his report on the meeting of chairpersons that he had begun at the Committee's 320th meeting.

26. Mr. SØRENSEN said that the chairpersons had decided that each committee should consider the possibility of asking States parties to submit more focused reports, concentrating on follow-up to observations and

recommendations arising from the consideration of the previous report. That could also be a way of impressing on refractory States parties the fact that the committees wanted to see action taken on their recommendations.

27. Mr. YAKOVLEV proposed that, with effect from the second periodic report, States should include in their reports to the Committee a section dealing with follow-up action on its recommendations. Each country rapporteur should therefore have a copy of the country's initial report and of the recommendations made when the previous report was considered.

28. Mr. GONZÁLEZ POBLETE noted that each part of the text of the Committee's conclusions contained recommendations and that they were not necessarily presented as an exhaustive list made up of three or four components.

29. On a proposal by Mr. SØRENSEN, the CHAIRMAN requested the secretariat to amend the guidelines for the preparation of second periodic reports.

30. Mr. SØRENSEN said that the chairpersons had discussed ways of helping small countries, for which the preparation of reports raised problems of skills and resources. The possibility of having the countries concerned submit a single global report to all treaty bodies had been contemplated. The representative of the Committee against Torture and the Chairman of the Committee on the Elimination of Racial Discrimination had expressed reservations on that score, pointing out that the provisions of the two conventions concerned were too specific to be dealt with in a global framework. The discussion would be resumed at the tenth meeting of chairpersons in September, and it would be appropriate for the Committee to formulate a general opinion on the matter.

31. Mr. ZUPANČIČ said he was against the idea that small countries, all of which had their own unique legal systems, should be treated differently from big countries. Longer deadlines could perhaps be granted but all countries should remain subject to the same standards.

32. Mr. EL MASRY considered that the preparation of a composite report would create major problems for small countries in terms of coordination between different government ministries and services, so that it was not a satisfactory solution. It would be preferable to help the countries concerned to prepare their reports and perhaps even to consider launching a United Nations Development Programme (UNDP) project for the purpose.

33. The CHAIRMAN said that resources were in fact the crux of the matter and that the Committee's position could be summarized by stating that it wanted countries to continue submitting separate reports but was more than willing to provide them with the assistance they needed to do so. He noted that the Office of the High Commissioner for Human Rights organized courses for different categories of officials involved in drafting reports.

34. Mr. SØRENSEN said that the question of human rights training had also been discussed at the meeting of chairpersons. In that connection, they had proposed that all United Nations staff, especially those taking part in field

missions, should be given training. They had further proposed that the Office of the High Commissioner for Human Rights should be asked to organize a training module for peace-keeping forces.

35. In addition, the chairpersons had given a great deal of thought to the issue of States that failed to fulfil their reporting obligations. Some committees currently considered the situation of such countries in the absence of reports but others refused on the grounds that they lacked the legal authority to do so; it had been noted in that connection that many procedures established by the committees had not been explicitly provided for in their founding instruments. Moreover, taking the view that a committee had no means of action when a State party failed to submit a report amounted to giving individual States parties the option of challenging the aims and purposes of the treaty. However that might be, if the procedure of consideration in the absence of reports was adopted, the Government concerned would have to be informed of the date and time of consideration and be aware that it still had the possibility of sending a report and a delegation. It was for the Committee to rule on the matter but, as far as he was concerned, consideration of a situation in the absence of a report was a sound option.

36. The CHAIRMAN drew the members' attention to rule 65, paragraph 2, of the rules of procedure, which stipulated that, if the State party did not submit the report required under rules 64 and 67 of the rules of procedure, the Committee should so state in its annual report to States parties and the United Nations General Assembly. The Committee was therefore not entirely at a loss when a State party remained silent. He considered that a country's failure to fulfil its reporting obligations was a breach of the principle of justice among States parties and impaired the Committee's effectiveness. A second argument which jurists might find more attractive was that, where a contract or treaty had a shortcoming, those responsible for its implementation could avail themselves of means of giving effect to the instrument, without, of course, going so far as to rewrite it. He himself was not at all convinced by that argument because one could not be sure, in taking such liberties, of respecting the intentions of the instrument's authors. Ex post facto interpretation of the provisions of a text was liable to create fresh problems and the Committee had thus far adopted a more literal approach because the majority of its members were jurists who were aware of the risks involved. In any case, article 19, paragraph 1, of the Convention was unambiguous: having ratified the Convention, States parties were obliged to report at regular intervals. Otherwise they were in breach of the Convention. The question was what the Committee could do in such cases. Article 19 was silent on that issue, while rule 65 of the rules of procedure offered relatively limited scope, entailing a light penalty for the defaulting State. If the Committee felt that the measures it had taken were ineffectual and if, for example, certain States had failed to submit reports for over 10 years, what means could it use to secure compliance with article 19 of the Convention? Would the members of the Committee then conclude that they were authorized to consider the situation in a State party in the absence of any report? If so, the Committee would have to amend its rules of procedure accordingly.

37. Mr. GONZÁLEZ POBLETE said that the most serious consequence of defaulting by States parties was not that the Committee was left with no reports to study - it actually had far too many to deal with in the time

available - but the fact that it could form no idea of the situation regarding torture in certain countries. In view of the chronic delays in a number of cases, the Committee should find some means of detecting the most serious situations, possibly in order to set in motion the procedure contemplated in article 20 of the Convention. Owing to time constraints, however, Committee members focused exclusively on information relating to the countries to be dealt with during the session; they did not seek information from other sources - such as special rapporteurs, the Human Rights Committee and certain non-governmental organizations (NGOs) - concerning countries where the situation was serious but which were not on the Committee's agenda. If the Committee took note of the information from such sources, it could form an impression of the situation in countries that had not even submitted initial reports and include a few sentences on the subject in its report to the General Assembly in order to prompt the countries concerned to submit reports rather than allowing the situation to deteriorate to the point where the article 20 procedure had to be applied.

38. The CHAIRMAN said he took it that, in Mr. González Poblete's view, the Committee was entitled to do more than simply refer, in its report to the General Assembly, to the fact that a particular State had failed to report.

39. Mr. CAMARA expressed the contrary view that, pursuant to article 19 of the Convention, the Committee was not entitled to act until it had received a State party report. Paragraph 3 of that article was quite explicit: the Committee could do nothing in the absence of a report.

40. The CHAIRMAN, noting the divergence of views, said that the Committee must adopt a consensus approach so that its position could be presented clearly at the meeting of chairpersons of human rights treaty bodies.

41. Mr. SILVA HENRIQUES GASPAR shared Mr. González Poblete's view. While the Committee had no authority to act under article 19 of the Convention, it could do so under article 20.

42. The CHAIRMAN pointed out that Mr. González Poblete had not suggested setting in motion the article 20 procedure just because a State had not submitted a report; that would be an unduly sharp reaction which would set the Committee on a collision course with many States parties.

43. Mr. YU Mengjia shared Mr. Camara's view and stressed that article 20 was not in any case applicable to all States. He wished to know whether committees had recourse to the procedure of considering a country situation in the absence of a report, as advocated by Mr. Sørensen.

44. Mr. SØRENSEN replied that the Committee on the Elimination of Racial Discrimination and the Committee on Economic, Social and Cultural Rights applied that procedure.

45. Mr. EL MASRY suggested that the Committee, while continuing to send reminders to States that had failed to report and to inform the General Assembly of their negligence, could subsequently, in the light of information received from other sources such as NGOs, attempt to engage in a dialogue with the States concerned by forwarding the information and asking

them to comment. The State would either reply, in which case it could be broadly considered to have filed a report, or else it would remain silent, in which case the Committee could inform the General Assembly that it had sent the information in question to the State party and had received no reply. It would be difficult to go any further because, he stressed, the Committee could not modify the Convention by amending its rules of procedure.

46. The CHAIRMAN noted that Mr. El Masry's position was close to that of Mr. González Poblete. He observed that the Committee had little prospect, under current circumstances, of receiving information about a country that was not on the agenda from NGOs because they were also limited by time constraints to the countries to be considered. Nevertheless, the possibility of their supplying such information existed and there was nothing to prevent the Committee from acting as suggested by Mr. El Masry.

47. Mr. ZUPANČIČ supported Mr. El Masry's suggestion.

48. Mr. YAKOVLEV felt that, while it would be improper to invoke article 20 under the circumstances, the Committee had the authority, under article 19, to ask the secretariat, in cases where an initial report was more than 10 years overdue, to compile relevant information on the State concerned; it was more than likely, at least in the most flagrant cases, that same information had been published, for example, in the international press. The Committee could then send the information, without commenting on its veracity but noting the fact that it had been published, to the State party with a view to eliciting its comments and perhaps prompting the dispatch of an initial report. In the event of a major delay in the submission of a periodic report, the Committee could ask the defaulting State party for information on implementation of the recommendations it had made concerning its initial report. The Committee would not exceed its mandate in taking that line.

49. Mr. EL MASRY considered it unreasonable to assign the role envisaged by Mr. Yakovlev to the secretariat, since that would amount to making it responsible for conducting research under article 20. On the other hand, if a Committee member obtained knowledge of certain relevant facts, either directly or through the media, he could draw the Committee's attention to the problem and the secretariat could then be requested to carry out the relevant research.

50. Mr. SØRENSEN said that he would, of course, join the consensus desired by the Chairman but he had a suggestion to make. In paragraph 21 of its last report to the General Assembly (A/52/44), the Committee had referred to the problem of non-submission of reports in strong but unduly abstract terms. In its next report, it could specify, after noting that non-compliance by a State party with its reporting obligations constituted a breach of the provisions of the Convention, that the reports of certain States were more than five years overdue. Moreover, if the suggestions made by Mr. El Masry and Mr. Yakovlev were approved, the Committee could state that it had also received information to the effect that violations of certain articles of the Convention had occurred in a particular country. The impact of the report would then be enhanced.

51. The CHAIRMAN thanked Mr. Sørensen for agreeing to join in the consensus. He thought that a list of States whose reports were more than five years overdue could indeed be included in the report to the General Assembly. On the other hand, it would be difficult to claim without prior consideration that a particular State had violated the Convention.

52. Mr. CAMARA stressed that the Committee's only option under article 19 was to encourage States to fulfil one of their primary obligations under the Convention, namely to submit a report. On a strict interpretation of the terms of that article, the initiative lay entirely with the States parties and if a State deserved to be censured, it was for the other States to do so. It was precisely for that reason that the suggestion had been made, in the context of the draft United Nations framework convention agains organized crime, which would also provide for the submission of periodic reports by States parties, that, given the manifest inability of certain less developed States to produce reports, the Centre for International Crime Prevention should consider offering some form of assistance to those States. A similar procedure could be contemplated to secure implementation of article 19; the Office of the High Commissioner for Human Rights could perhaps find ways of assisting defaulting States, given that th absence of a report did not necessarily indicate that a State had something to hide.

53. The CHAIRMAN noted that two extreme points of view had been defended by Mr. Sørensen and by Mr. Camara but that a majority of members favoured the intermediate position advocated by Mr. El Masry, namely that the Committee's authority under article 19 consisted solely in reacting to the reports of States parties but that it had a certain latitude, when information reached it from other sources concerning a non-reporting State party, to invite that State to respond to the allegations; the Committee could then mention in its report to the General Assembly whether or not the State in question had responded to its request.

54. Mr. SILVA HENRIQUES GASPAR said he wondered whether the Committee, on a somewhat broad interpretation of article 19, paragraph 1, could not be considered to have independent authority to request a State, even if it had not submitted an initial report, to report to it on specific issues.

55. The CHAIRMAN noted that Mr. Silva Henriques Gaspar's position was close to that of Mr. Sørensen. He himself, on the other hand, was inclined to support Mr. Camara's view. However, the majority of Committee members seemed to favour the intermediate solution proposed by Mr. El Masry and, if Mr. Sørensen, Mr. Camara and Mr. Silva Henriques Gaspar had no objection, he would take it that the Committee decided to support it.

56. It was so decided.

The meeting rose at 12.20 p.m.